HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.271 of 2007
AND
WRIT PEITTION No.18330 of 2006

Writ Appeal No.271 OF 2007

Between:

T.Madhukar Reddy …Appellant

And

G.Venkatesh and others. …Respondents

Writ Petition No.18330 OF 2006

Between:

G.M.Munivenkataswamy and others. …Petitioners

And

The Commissioner of Prohibition and Excise,
Andhra Pradesh, Hyderabad
and others. …
Respondents

; COMMON JUDGMENT :

Counsel for the appellant : Shri V.Srinivas

Counsel for respondents 3 to 5 : Government Pleader
For Prohibition & Excise

Counsel for respondents 1 &2
& petitioners in Writ Petition : Shri K.Raghuveer Reddy

1st May, 2007

Per C.V.NAGARJUNA REDDY, J.

The above noted appeal and petition are being disposed of by one order because the question of law which arises for determination by the Court is common to both the cases.

Writ Appeal No.271 of 2007

Sri T. Madhukar Reddy has preferred this appeal against order dated 1.3.2007 passed by the learned Single Judge in Writ Petition No.215 of 2007 whereby he nullified A-4 licence granted to the appellant for running liquor shop at door No.11-250-67/B, Neerugattuvaripalli Village, Madanapalle Municipality of Chittor District as illegal, arbitrary and without jurisdiction.

It is borne out from the record that vide Circular No.6147/2006/CPE/D2 dated 26.5.2006, the third respondent fixed 458 shops in various localities in Chittoor District for grant of A-4 licences under the Andhra Pradesh Excise (Lease of Right of Selling by Shops and Conditions of Licence) Rules 2005 (for short 'the Rules'). Thereafter, respondent No.4 issued notification Rc.No.219/2006/A dated 27.5.2006 and invited bids from the eligible parties. For Madanapalle Municipality, 12 shops including the one for Ward No.35 were notified. For Puthalapattu Mandal, 7 shops and their respective locations were notified. These included a shop for Rangampet Cross (Shop-2).

The first respondent offered highest bid of Rs.22,55,255/- for shop No.57, Ward No.34 of Madanapalle Municipality and Mandal. The competent authority accepted his bid and accordingly he was granted A-4 licence. Respondent No.2 gave highest bid for the shop located in Ward No.35. The same was accepted and he was also granted A-4 licence. Likewise, the

highest bids given for other shops were accepted and A-4 licences were granted to the concerned authorities. However, no one came forward to give bid for shop No.165 of Puttapattu Mandal (Rangampet Cross).

Writ Petition No.18330 of 2006

In pursuance of notification dated 27.5.2006 issued by respondent No.2 District Collector, the petitioners participated in the auction. For Kuppam village and Mandal, 7 shops were notified. They gave highest bids of Rs.26,45,000/-, 40,00,058/- and Rs.29,75,000/- for shop Nos. 414, 410 and 412 respectively. Their bids were accepted by the competent authority and A-4 licences were granted to them. After some time, respondent No.2 issued notification No.116/2006 dated 28.8.2006 whereby it was proposed to relocate shop No.165 of Rangampeta Cross of Puthalapattu Mandal to Kuppam. Feeling threatened by the prospects of loss of business, the petitioners filed writ petition and prayed for quashing of notification dated 28.8.2006. While admitting the writ petition on 1.9.2006, the learned Single Judge passed an interim order and stayed further proceedings in pursuance of notification dated 28.8.2006.

In an apparent bid to overcome the hurdle created by the interim order passed in Writ Petition No.18330 of 2006, respondent No.2 issued a fresh notification, which was published in Gazette No.164/2006 dated 16.12.2006 whereby he proposed to shift shop No.165 of Rangampeta Cross to Ward No. 35 of Madanepalle Municipality (Neerugattuvaripally). In the consequential auction,

the appellant in Writ Appeal No.271 of 2007 gave the highest bid and, on that basis, he opened a shop opposite to the shop of respondent No.2. Respondents 1 and 2 filed Writ Petition No.215 of 2007 questioning the action of respondent Nos. 3 to 5 in granting licence to the appellant to open and run the shop at Neerugattuvaripally. The learned Single Judge, as aforementioned, allowed the writ petition.

Sri Vedula Srinivas assailed the order of the learned Single Judge by arguing that the reasons assigned by him for nullifying the grant of A-4 licence to his client are legally untenable. He referred to Section 17 of the Andhra Pradesh Excise Act 1968 (for short 'the Act') and argued that the Government has got exclusive privilege to grant lease or licence to any person at any place to manufacture or sell wholesale or retail liquor, and in his capacity as delegate of the State Government, respondent No.2 did not commit any illegality by shifting the shop notified for Rangampeta Cross of Puthalapattu Mandal to Ward No.35 of Neerugattuvaripally of Madanapalle Municipality. He further argued that a citizen does not the fundamental right to carry on business in liquor and, therefore, respondent Nos.1 and 2 had no right to question the grant of licence to the appellant. Learned counsel also referred to the provisions of Rules 3, 4 and 5 of the Rules and argued that respondent No.2 did not commit any illegality by changing the location of the shop from Rangampeta Cross to Ward No.35 of Madanapalle Municipality.

The learned Government Pleader supported the arguments of Shri Vedula Srinivas and argued that the Commissioner of

Prohibition and Excise is conferred with the power to fix such number of shops as, in his discretion, he thinks fit having regard to the parameters contained in Rule 4 in any area/locality and the decision to shift the location from Rangampeta Cross to Ward No.35 of Madanepalle was taken in exercise of that power. He submitted that this was necessitated for protecting the revenue of the State and that respondent Nos.1 and 2 have no right to question this decision.

Per contra, learned counsel for respondents 1 and 2 in the writ appeal and for the petitioners in the writ petition contended that though the State has got right under Section 17 of the Act to grant privilege to permit manufacture or sale of liquor under licence/lease to any citizen, such a power cannot be exercised arbitrarily. It is his contention that once the Commissioner exercises his power under Rule 4 and the process of auctioning the right to sell liquor is completed, he, or for that reason, the District Collector cannot issue successive notifications changing the area/locality of the shops already notified during the licence period. Learned counsel submitted that if this is permitted, the viability of the business of the licensees, who offered bids keeping in view the number of shops located in a particular area, will be adversely affected. He then argued that the learned Single Judge rightly cancelled A-4 licence granted to the appellant.

We have given serious thought to the respective arguments. Section 13 of the Act inter alia prohibits manufacturing and collection of intoxicants and bottling of liquor for sale except under a licence granted for this purpose. Section 15 contains

prohibition against the sale or buying of an intoxicant except under a licence granted in accordance with the provisions of the Act and the Rules. Under Section 17, the Government is vested with the power to grant exclusive privilege of manufacture or supply or of both or of selling by wholesale or retail any liquor or other intoxicant within any such area in the State as may be specified by it. Sub-section (2) of Section 17 enables the Government to delegate its power under Section 17(1) to any officer.

In exercise of its rule making power under Section 72 read with Sections 17(2) and 29 of the Act, the Governor of the State made the rules which inter alia lay down the method and manner by which the lease of right to sell Indian liquor and foreign liquor is to be granted. For deciding the issue arising in these cases, it will be useful to notice Rules 3 to 5 and Rule 21 of the Rules. The same read as under:

> "**3. Lease of Right to sell Indian Made Foreign Liquor and Foreign Liquor:**
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> Subject to the provisions of these rules the grant of lease of right to sell Indian made Foreign Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public after due notification. The lease shall be for a period of two years or part thereof.
>
> Provided that where the Commissioner considers it expedient to grant the lease of right to sell Indian Made Foreign Liquor and Foreign Liquor by shop in any other manner, he shall for the reasons to be recorded in writing, do so.
>
> **4. Establishment of Shops:**
>
> The Commissioner of Prohibition and Excise having due regard to requirement, public order, health,

safety and other factors as he thinks fit, may fix the number of shops to be established in an area/locality before the publication of the Auction Notice under Rule-5.

5. Auction Notice:

1. Where it is proposed to grant the lease for sale of Indian Made Foreign Liquor and Foreign Liquor by shop a notice of the proposed auction containing the particulars mentioned in sub-rule (2) shall be published, at least (7) seven days in advance of the date of auction, by the Collector of the District in the District Gazette or in such other manner as the Collector may deem fit.
2. The auction notice shall contain the following particulars:
    1. Serial number and the name of the area/locality where the shop will be established;
    2. The last date, time and place for receipt of tenders;
    3. The place of auction with time and date;
    4. The conditions governing the auction.
    5. The lease period and
    6. Any other matter which may be considered necessary by the auctioning authority.

21. Sale by outlets of A.P.B.C.L. and the Distillery/Brewery Licence holders:

1. The auctioning authority with the approval of the Commissioner of Prohibition and Excise may permit the A.P.B.C.L. or a holder of a distillery/brewery licence under the Act to open outlets for the sale of IL & FL in such area/localities where the privilege of sale by shop could not be disposed off in the auction or when a lease already granted is cancelled and the same could not be re-auctioned for any reason.

2. The Commissioner of Prohibition and Excise may permit the A.P.B.C.L. to open outlets for the sale of IL & FL anywhere in the State whenever he deems necessary

in public interest."

An analysis of the above produced provisions makes it clear that while the Government has got the exclusive privilege to permit any person to sell Indian Made Foreign Liquor under a licence/lease, the method and manner of granting licence/lease are regulated by the statutory rules. Under Rule 4, the Commissioner is vested with the power to fix the number of shops to be established in an area/locality before the publication of auction notice. Rule 5 provides for issue of notice by the District Collectors and holding of auction for granting leasehold rights to sell liquor by shops. Before the auction notice is issued by the District Collector, the Commissioner of Prohibition and Excise is required to fix the number of shops to be established in an area/locality having regard to the parameters indicated in Rule 4. In terms of Rule 3, the period of licence is two years. Rule 21 authorises auctioning authority, with the approval of the Commissioner of Prohibition and Excise, to permit the A.P. Beverages Corporation Limited (APBCL) or a holder of a distillery/brewery licence to open outlets for the sale of Indian Liquor or Foreign Liquor (IL & FL) in such area/locality where the privilege of sale by shop could not be disposed of in the auction or when a lease already granted is cancelled and the same could not be re-auctioned for any reason. Under sub-rule (2) of Rule 21 of the Rules, the Commissioner of Prohibition and Excise is empowered to permit the APBCL to open outlets for sale of IL & FL anywhere in the State whenever he deems necessary in public interest.

From the scheme of the Act and the Rules, it is evident that before the lease for sale of liquor in retail is granted, the number of shops and their locations are required to be fixed by the Commissioner of Prohibition and Excise. Once this exercise is undertaken, the lease is granted by the District Collector for a period of two years. There are two contingencies where the auctioning authority can permit opening of shops after the auction is held, they are; i) the auctioning authority, with the prior approval of Commissioner of Prohibition and Excise, may permit APBCL or a holder of distillery/brewery under the Act to open sale of IL and FL in areas/localities where privilege of sale by shop could not be disposed of in the auction or when a lease already granted is cancelled and the same could not be re-auctioned for any reason; and ii) the Commissioner of Prohibition and Excise may permit the APBCL to open the outlets for the sale of IL and FL anywhere in the State whenever he deems necessary in public interest.

The Act and the Rules do not empower the Commissioner or the auctioning authority to hold a fresh auction to relocate a shop, which, for any reason, could not be auctioned in pursuance of the notification issued under Rule 4 of the Rules. The reason for this is not far to seek. The Commissioner on the basis of the details relating to business potentiality of the area/locality fixes the number of shops and their locations. Before giving bid, every person makes an assessment of business viability. While doing so, he would normally keep in view the location of the shops and the anticipated business. The business of the existing licensee/lessee is bound to be adversely affected if the shops are

allowed to be relocated from one area/locality to another area/locality. This also results in unfair business competition and uncertainty. In other words, if the shops are located from one area/locality to another area/locality, the assessment made by the bidders is bound to go haywire and adversely affects their business. This is the reason why the State Government has allowed the Commissioner and the auctioning authorities a limited play in the joints by envisaging Rule 21, which vests discretion in these authorities to take care of the contingencies arising out of the situations envisaged in the said Rule. If the rule making authority had intended to empower the Commissioner and the auctioning authority to re-locate the shops, then it would have made a specific provision for that purpose. Rule 21 expressly authorises the competent authority to allow APBCL to sell liquor in such areas/localities where the privilege of sale by shop could not be disposed of in the auction.

Section 17 of the Act, as discussed above, provides that the licences/leases to be granted under the Act are subject to the provisions of Section 28 of the Act and the Rules made under the Act. Section 28 of the Act provides for stipulation of conditions for issuing permit or licence under the Act. Therefore, once the Rules are made and the conditions are stipulated, it is not open to the authorities acting under the Act and the Rules to claim unfettered discretion to grant licenses ignoring the rules under which they act. In other words, once the notification under Rule 4 is issued, except in the situations mentioned in Rules 21 and 29 (3) of the Rules, it is not permissible for the Commissioner and the

auctioning authorities to relocate or shift the shops.

In view of the above discussion, we hold that Rule 4 does not empower the Commissioner or the auctioning authority to shift the area/location of a shop for which no bid is given in the auction or where a lease already granted is cancelled and the learned Single Judge did not commit any error by setting aside the licence granted in favour of the appellant.

In the result, the appeal is dismissed and the writ petition is allowed in terms of the prayer made.

As a sequel to dismissal of the writ appeal and disposal of the writ petition, WAMP.No.511 of 2007 and WPMP.No.23033 of 2006 filed for interim relief are disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

1st May, 2007.

Mdaa/es